

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 14277, of 1753 Swann Street Condominium Association, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the lot occupancy requirements (Sub-section 3303.1) for a proposed rear deck addition to an existing condominium apartment house in an R-5-B District at premises 1753 Swann Street, N.W., (Square 152, Lot 193).

HEARING DATE: April 10, 1985  
DECISION DATE: May 1, 1985

FINDINGS OF FACT:

1. The subject property is located on the south side of Swann Street, N.W., between 17th Street on the east and 18th Street on the west. The site is in an R-5-B District and is known as premises 1753 Swann Street, N.W.

2. The subject lot is nearly rectangular in shape, with an unusual indentation of five feet at the north end. Its overall dimensions are 28.5 feet on the north and south sides, eighty-five feet on the west and eighty feet on the east. It has an area of 2,302.05 square feet.

3. The indentation makes this lot shallower than all other lots on the north side of Swann Street.

4. The subject site is improved with a four-unit condominium apartment house. The subject dwelling is a three-story brick structure with a finished cellar that was constructed in 1983.

5. There is access to and from the lower level condominiums through Swann Street on the south and from a ten foot wide public alley on the north. The two upper level condominiums have direct access only to Swann Street.

6. The subject square and surrounding neighborhood are developed with apartments, rowhouses and semi-detached dwellings on lots of varying sizes. The neighborhood area is zoned R-5-B and is primarily residential in use. The neighborhood is part of the Dupont Circle Historic District.

7. The subject building is occupied by four owner-occupant families. Each of the units is on two levels. Two of the units share the cellar and first floor, and the other

two units share the second and third floors, with the units separated by a common wall running north-to-south through the center of the building. At the north end of the lot, in the rear of the building, is a common area for parking and trash disposal.

8. At present, this common area is accessible only to the two lower units, by way of a legally approved deck off the first floor level. The upper two units do not have direct access from the building to the trash disposal and parking areas. In order for the families in the upper units to dispose of trash or go to and from their parked vehicles, they must leave their units by the front door on Swann Street, turn right on 18th Street, and walk down the alley, a total distance of 750 feet.

9. The applicant proposes to construct a two-level open deck addition above the existing first-floor deck at the rear of the subject building, with a stairway only to the second floor level. The addition would provide the upper two units with access from the second floor level to the common parking and trash disposal areas at the rear. Access to the third floor would be by way of an interior staircase.

10. The proposed two-level deck addition would be built directly above the existing first-level deck and would correspond exactly in area and dimensions. The proposed addition would consist of a frame built of steel beams, and deck surfaces built of pressure-treated wood, the same materials used in the existing first-level deck. The proposed addition would measure approximately 27.1 feet in width. The depth would vary from 5 feet to 9.5 feet because of the staggered contours of the dwelling. The open deck would not be enclosed.

11. The maximum allowable lot occupancy permitted in an R-5-B District is sixty percent, or 1,381.5 square feet for the subject lot. The existing building occupies 1,374.5 square feet. The proposed deck would have an area of 233 square feet and would increase the lot occupancy of the total structure to 1,607.5 square feet. Thus, the proposed addition requires a variance of 226 square feet from the lot occupancy requirement of Sub-section 3303.1. These areas are based on a recalculation, because of error in the original building plat submitted. After correction this would require a fourteen percent variance.

12. The apartment building was constructed as a joint venture by a group of four parties, each of whom was to occupy one of the units. One of the parties was a developer, who handled the construction details for the group, including obtaining building permits. Before the construction was completed, the developer left the project. The remaining

three parties, who had no previous experience in development, completed the project, which at that point basically required only interior work.

13. One of the exterior items included the construction of the deck which is the subject of this application. The owners assumed that the plans which had been approved provided for the construction of the deck, which had been their intention from the beginning. The applicant then proceeded to begin construction of the deck, for which the steel frame has already been erected.

14. The applicant proceeded to erect the frame in good faith based on representations made by the original developer of the project that all permits for both the building and the deck were in order. Work on the deck stopped immediately upon notification by the District of Columbia that permits were required and that a variance was needed.

15. The Board of Zoning Adjustment has the power to grant variances under Paragraph 8207.11 of the Zoning Regulations which provides that where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions of a specific piece of property, the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, the Board may grant a variance from the strict application so as to relieve such difficulties or hardship provided such relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and map.

16. There is an extraordinary and exceptional condition affecting the subject site arising from the depth and shape of the lot. Prior to the adoption of the Zoning Regulations in 1958, on January 25, 1869, the District of Columbia apparently required a dedication for carriageway or pass-through for nearly the entire width of the subject lot, for a depth of approximately five feet. This means the lot in question has an odd shape and a shallower depth by five feet than the abutting lots to the east and west, a condition apparently unique for the entire south side of the alley in this block of Swann Street. The loss created a shallow lot, an odd shape, and reduced the square footage of the lot to the extent that any utilization for a deck would violate existing lot occupancy requirements.

17. This exceptional condition renders it impossible to construct the proposed open deck without the requested variance.

18. Even with the proposed deck, the subject property is in harmony with the adjacent structures, since it does not extend beyond the buildings or porches on the abutting lots and, in fact, follows the lot line in the rear by dipping south in relation to the abutting structures. The proposed deck thus would have no adverse effect on the surrounding properties.

19. The addition of the deck also adds to the liveability of the upper units by providing access to private outdoor space.

20. The proposed deck would not increase the square footage actually covered because it would conform exactly in size and dimension to an existing, approved deck on the first floor. A variance was not required for the first-floor deck because it is less than four feet above grade.

21. The applicant met with neighboring property owners and residents to review with them the plans for the proposed addition. The applicant received verbal or written support from all but one neighbor. The applicant also met with representatives of the Advisory Neighborhood Commission 1C to discuss the application and review the plans.

22. Eight neighboring owners and residents submitted letters to the record expressing support for the application. Their support was based on the tasteful design, the consistency with porches on many of the original homes, the contribution to neighborhood security that would arise from use of the deck overlooking the alley, and the neighborliness that would result from increased interaction.

23. There was no report in the record from Advisory Neighborhood Commission 1C.

24. The owner of the neighboring property at 1751 Swann Street, N.W., objected to the application. The neighbor raised concerns about cracks in the plaster walls arising from the original construction of the applicant's building, and about the potential impact on security if the uppermost level of the proposed deck afforded access to adjoining rooftops from the alley.

25. The applicant met with the neighbor and both parties agreed that progress was being made toward resolution of the concerns. The Board notes that the wall in question is a party wall, which is partly located on the applicant's property. The applicant has offered to repair the cracks in the plaster. The applicant also offered that the deck would provide access only to the second floor level. The third floor level of the deck would be accessible only from inside the upper apartment units. In further consideration of the neighbor's security concerns, the applicant also offered to

build a steel fence at least six feet high with locking gate, at the base of the deck.

26. The Board will impose conditions regarding the staircase and the fence to address the security concerns of the neighbor. The damage done by construction of the building and/or the deck is not an issue upon which the Board has the competence or the jurisdiction to rule.

27. Since the rear yard is partially used for parking spaces, the Board will further require that the staircase from the deck to the yard not obstruct any required parking space.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking an area variance, the granting of which requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property, such as exceptional narrowness, shallowness, shape, or topographical conditions. The Board further must find that the relief requested can be granted without substantial detriment to the public good and that it will not substantially impair the intent and purpose of the zone plan.

The Board concludes that the applicant has met this burden of proof in showing a practical difficulty inherent in the property. The shallowness and shape of the subject lot are exceptional conditions which cause the construction of an addition at the rear of the dwelling to violate the Zoning Regulations. The Board further concludes that permitting the proposed rear addition will not cause substantial detriment to the public good, nor will it substantially impair the intent and purpose of the zone plan. The proposed structure is not objectionable to the neighborhood and will permit a reasonable use of private property. Accordingly, it is therefore hereby ORDERED that the application is granted SUBJECT to the following CONDITIONS:

1. The stairway shall not obstruct any required parking space.
2. The stairway shall not extend beyond the second floor level.
3. The applicant shall provide a six foot high steel fence with locking gate at the base of the proposed deck.

VOTE: 4-0 (Charles R. Norris, William F. McIntosh, Lindsley Williams and Carrie L. Thornhill to grant; Douglas J. Patton not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

  
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: 5 JUL 1985

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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